

CITY COUNCIL AGENDA STATEMENT



OCTOBER 23, 2012, Item 11

ITEM TITLE: PUBLIC HEARING ON DISESTABLISHMENT OF THE CHULA VISTA TOURISM AND MARKETING DISTRICT, PURSUANT TO STREETS AND HIGHWAYS CODE SECTION 36670, BASED ON PETITIONED REQUEST BY BUSINESS OWNERS WHO PAY MORE THAN FIFTY PERCENT OF THE CVTMD ASSESSMENTS

RESOLUTION OF THE CITY COUNCIL OF CHULA VISTA DISESTABLISHING THE CHULA VISTA TOURISM AND MARKETING DISTRICT AND DIRECTING THE DIRECTOR OF FINANCE TO DISTRIBUTE ANY REMAINING CVTMD REVENUES AND ASSETS PURSUANT TO STREETS AND HIGHWAYS CODE SECTIONS 36670-36671

SUBMITTED BY: CITY ATTORNEY *ERG*
FINANCE DIRECTOR/ TREASURER *and for MK*

REVIEWED BY: CITY MANAGER *[Signature]*

4/5THS VOTE: YES ☐ NO ☒

SUMMARY

The Chula Vista Tourism and Marketing District ("CVTMD") was established pursuant to state law, the Property and Business Improvement District Law of 1994¹ (the "PBID Law"), in 2009. Pursuant to the PBID Law, the CVTMD can be disestablished by petition of 50 percent or more of the assessed business owners. On June 12, 2012, the City Council adopted a resolution approving administrative procedures for the handling of petitions that might be submitted for disestablishment of the CVTMD. The 30-day petition period for 2012 commenced on July 14th and ended on August 13th. During the petition period, petitions to disestablish the CVTMD were received from business owners who pay 50 percent or more of the CVTMD assessments. In accordance with the PBID Law, on September 20, 2012, the City Council adopted a resolution of intention to disestablish the CVTMD, and set the public hearing for October 23, 2012. Tonight, the City Council is being asked to hold that public hearing and determine if the CVTMD should be disestablished. A resolution of disestablishment has been provided for the City

¹ California Streets and Highways Code sections 36600, *et seq.*

Council's consideration, in the event the City Council decides to disestablish the CVTMD.

ENVIRONMENTAL REVIEW

The Environmental Review Coordinator has reviewed the proposed action for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378(b)(4) of the State CEQA; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

RECOMMENDATION

Staff recommends that the City Council hold the public hearing, consider the testimony presented and determine, in its discretion, whether or not to proceed with CVTMD disestablishment and the distribution of CVTMD assets.

BOARDS/COMMISSION RECOMMENDATION

Not applicable.

DISCUSSION

I. BACKGROUND

The CVTMD is a business improvement district established under the PBID Law. The PBID Law allows disestablishment of the district by resolution upon submittal of a petition (or petitions) by a majority of the owners of businesses in the district who, in aggregate, pay 50 percent or more of the assessments levied.² The period for presenting such a petition is the 30-day period commencing each year on the anniversary of the establishment of the district.³ The CVTMD was established on July 14, 2009. The petition period for 2012 commenced on July 14th and ended on August 13th.

In January 2012 a number of the hotel/motel owners assessed under the TMD submitted petitions to disestablish the CVTMD. These petitions were not submitted during the time period provided by state law and did not contain all the information necessary to process. Because of this, the City Attorney's Office identified the need for procedures to supplement the State code in this area. At the City Council meeting on March 13, 2012, the Council requested that draft procedures be brought back in April for Council's input. Those draft procedures were submitted to the Council on April 24, 2012. Subsequently, staff met with, and presented draft procedures to: Chamber of Commerce representatives; the Chamber's TMD Board (May 2nd); and the Chamber's Hotel/Motel Committee (May 8th). Draft procedures, along with a request for comments, were also transmitted directly to the CVTMD hotel/motel owner/operators in advance of the May 8th Hotel/Motel Committee meeting. Additional direction was received from the City Council at its May 22, 2012 meeting. On June 12, 2012, the City Council adopted a resolution approving

² California Streets and Highways Code §36670(a)(2).

³ California Streets and Highways Code §36670.

administrative procedures for the handling of petitions that might be submitted for disestablishment of the CVTMD.

On June 20, 2012 the Director of Finance/City Treasurer notified all members of the TMD of the commencement of the petition period and provided them with a copy of the adopted administrative procedures and a sample petition form. On the same day, copies of the notice, administrative procedures, and sample petition form were also made available at the Finance Department's public counter and on the City's website.

During the petition period, petitions to disestablish the CVTMD were received from twelve (12) members of the CVTMD. Per the adopted administrative procedures, these petitions were reviewed by Finance Department staff to confirm business ownership or authorization to act on behalf of owner by petitioners. This confirmation included review of business entity information on file with the California Secretary of State, the City's business license data, the City's Transient Occupancy Tax (TOT) certificate data, and historic TOT and TMD return filings. A review performed by Finance Department staff has determined that all petitions received meet the business ownership and/or authorized agent requirements of the administrative procedures.

The next step in the Finance Department's review was confirmation that all businesses submitting petitions are current on all amounts due and payable. This review considered assessments due and payable for the period July 1, 2011 through June 30, 2012. As of the August 30th deadline established in the administrative procedures, all twelve businesses submitting petitions were current on their assessments for the subject period.

The final step in the Finance Department's review was to determine whether petitions were submitted by TMD member business owners who pay 50 percent or more of the assessments levied in the CVTMD. For purposes of this calculation, per the adopted administrative procedures, the Finance Director utilized the CVTMD revenue and assessment data for the 12-month period ending on the preceding June 30th. A review performed by Finance Department staff has determined that petitions to disestablish the CVTMD were received from business owners representing 53.37% of the total CVTMD assessments for the subject period (\$484,775).

Following the Finance Director's confirmation of business ownership and/or agent authorization for petitioners, and the receipt of petitions representing more than 50 percent of the CVTMD assessments, the administrative procedures require that the Finance Director forward the petitions to the City Clerk for verification that the petitions submitted comply with the requirements of the policy. The petitions were forwarded to the City Clerk on August 29th, and the City Clerk has made the required verification. The results were then forwarded to the City Manager on August 30th. Accordingly, the requirements of Section 36670(a)(2), allowing for disestablishment by petition, have been met.

When the petition requirements have been met, Section 36670(b) requires that the City adopt a resolution of intention to disestablish the CVTMD and notice a hearing on disestablishment. The resolution of intention to disestablish the district must:⁴

1. State the reason for the disestablishment.
2. Contain the time and place of the public hearing before the City Council when disestablishment will be considered.
3. Include a proposal to dispose of any assets acquired with the revenues of the assessments levied within the district.

The resolution of intention to disestablish, meeting the above requirements, was adopted by the City Council on September 20, 2012. The City Council also set the public hearing for October 23, 2012. Notice of the hearing was given by mail to the owner of each business subject to the assessment, in accordance with the PBID Law.

II. PUBLIC HEARING

At the public hearing, the City Council will take public testimony related to the requested disestablishment of the CVTMD. The public will have the opportunity to protest the validity of one or more petitions, challenge the determination that the 50% threshold was reached, weigh-in on the proposed distribution of assets and provide input on any other matter related to the requested disestablishment.

A. City Council Discretion

The City Attorney's Office has previously advised the City Council, both verbally and in writing, regarding the extent of the City Council's discretion in this matter. Based on the plain language and regulatory framework of the PBID Law that advice was, and is, that the petitions to disestablish submitted constitute a valid request of the City Council to disestablish the CVTMD. In response to this request, based on evidence in the record at the public hearing, the City Council has the discretion to either disestablish the CVTMD, or to leave the CVTMD in tact. This basic legal framework has also been described to the CVTMD Board at their public meeting on October 3rd. Notice of that meeting was also provided to the full CVTMD membership.

If the City Council decides to disestablish the CVTMD, it should adopt the resolution and provide direction to City staff regarding disbursement of the CVTMD assets and remaining revenues.

B. Disposition of Assets

The PBID Law requires that the resolution of intention contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district. The resolution of intention adopted by the

⁴ California Streets & Highways Code §36670(b).

City Council on September 23rd contained such a proposal. That proposal was prepared by the Director of Finance and recommended in the event of disestablishment, the liquidation of CVTMD assets. The proposal further recommended that the annual financial audit required by the adopted Agreement for Tourism Marketing District Management Services ("Agreement") be used to identify the assets to be liquidated. Per the terms of the Agreement, the audit for fiscal year 2011-12 was to be submitted to the City no later than September 30, 2012, for the period July 1, 2011 through June 30, 2012. Staff recommended that the audit period be extended to cover activity through the date of disestablishment.

Under the disestablishment procedures established in the PBID Law [Section 36671(a)], all revenues remaining after payment of outstanding debts shall be refunded to the district members using the same basis that was used to calculate the assessments levied. The revenues to be refunded in this manner include both assessments levied and funds derived from the sale of assets. If disestablishment is implemented staff recommends that all funds on account with the CVTMD operator be turned over to the City within 1 week of the disestablishment of the district. Any expenditure of these funds would then be made by the City after confirming the expense was an existing obligation at the time of disestablishment. Following the payment of all verified debts, the City would refund the funds on account and the proceeds of the asset sale to the district members based upon their proportionate weight of the total CVTMD assessments levied in fiscal year 2011-12. Any additional assessments collected by the district members and remitted to the City subsequent to disestablishment of the district would be refunded directly to the payer.

DECISION MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site specific and consequently the 500-foot rule found in California Code of Regulations section 18704.2(a)(1) is not applicable to this decision.

CURRENT YEAR FISCAL IMPACT

No fiscal impacts to City funds are anticipated to result from disestablishment of the Chula Vista Tourism and Marketing District (CVTMD) in the current fiscal year. All CVTMD assessments collected by the City are remitted to the Chamber of Commerce (district owners' association). No assessments are retained by the City.

The Agreement for Tourism Marketing District Management Services between the City and the Chula Vista Chamber of Commerce requires the Chamber to reimburse the City for all operating costs incurred providing services to the CVTMD. Under this agreement, the General Fund will be reimbursed for all costs associated with the preparation of this report. If the Council disestablishes the CVTMD, the General Fund would similarly be reimbursed for all staff costs associated with the disposition of district assets, including refunds to district members.

The reimbursement to the City for supporting the CVTMD is capped at 3 percent of annual TMD revenues. Any reimbursement in excess of this amount requires mutual

agreement of the Chamber of Commerce and the City. Given this reimbursement mechanism, no fiscal impacts to the City are anticipated to result from administration of the disestablishment and disposition of district assets.

Disestablishment of the district eliminates the levy of the CVTMD assessment (2.5%) on transient occupancies throughout the City. RV parks and campgrounds are excluded from the CVTMD, and are not impacted by disestablishment of the district.

ONGOING FISCAL IMPACT

No ongoing fiscal impacts to City funds are anticipated to result from disestablishment of the CVTMD.

Prepared by: Jill D. S. Maland, Assistant City Attorney

RESOLUTION NO. 2012-_____

RESOLUTION OF THE CITY COUNCIL OF CHULA VISTA
DISESTABLISHING THE CHULA VISTA TOURISM AND
MARKETING DISTRICT AND DIRECTING THE DIRECTOR
OF FINANCE TO DISTRIBUTE ANY REMAINING CVTMD
REVENUES AND ASSETS PURSUANT TO STREETS AND
HIGHWAYS CODE SECTIONS 36670-36671

WHEREAS, the CVTMD is a business improvement district established under the PBID Law; and

WHEREAS, the PBID Law allows disestablishment of the district by resolution upon submittal of a petition (or petitions) by a majority of the owners of businesses in the district who, in aggregate, pay 50 percent or more of the assessments levied; and

WHEREAS, the period for presenting such a petition is the 30-day period commencing each year on the anniversary of the establishment of the district; and

WHEREAS, the CVTMD was established on July 14, 2009; and

WHEREAS, the petition period for 2012 commenced on July 14th and ended on August 13th and

WHEREAS, in January 2012 a number of the hotel/motel owners assessed under the TMD submitted petitions to disestablish the CVTMD, although these petitions were not submitted during the time period provided by state law and did not contain all the information necessary to process; and

WHEREAS, the City Attorney's Office identified the need for procedures to supplement the State code in this area; and

WHEREAS, at the City Council meeting on March 13, 2012, the Council requested that draft procedures be brought back in April for Council's input, and those draft procedures were submitted to the Council on April 24, 2012; and

WHEREAS, staff met with, and presented draft procedures to: Chamber of Commerce representatives; the Chamber's TMD Board (May 2nd); and the Chamber's Hotel/Motel Committee (May 8th); and

WHEREAS, draft procedures, along with a request for comments, were also transmitted directly to the CVTMD hotel/motel owner/operators in advance of the May 8th Hotel/Motel Committee meeting; and

WHEREAS, additional direction was received from the City Council at its May 22, 2012 meeting; and

WHEREAS, on June 12, 2012, the City Council adopted a resolution approving administrative procedures for the handling of petitions that might be submitted for disestablishment of the CVTMD; and

WHEREAS, on June 20, 2012 the Director of Finance/City Treasurer notified all members of the TMD of the commencement of the petition period and provided them with a copy of the adopted administrative procedures and a sample petition form, and copies of the notice, administrative procedures, and sample petition form were also made available at the Finance Department's public counter and on the City's website; and

WHEREAS, during the petition period, petitions to disestablish the CVTMD were received from twelve (12) members of the CVTMD; and

WHEREAS, a review performed by Finance Department staff has determined that all petitions received meet the business ownership and/or authorized agent requirements of the administrative procedures; and

WHEREAS, as of the August 30th deadline established in the administrative procedures, all twelve businesses submitting petitions were current on their assessments for the subject period; and

WHEREAS, a review performed by Finance Department staff has determined that petitions to disestablish the CVTMD were received from business owners representing 53.37% of the total CVTMD assessments for the subject period (\$484,775); and

WHEREAS, the petitions were forwarded to the City Clerk on August 29th, and the City Clerk has made the required verification; and

WHEREAS, the requirements of Section 36670(a)(2), allowing for disestablishment by petition, have been met; and

WHEREAS, when the petition requirements have been met, Section 36670(b) requires that the City adopt a resolution of intention to disestablish the CVTMD and notice a hearing on disestablishment; and

WHEREAS, the resolution of intention to disestablish, meeting the above requirements, was adopted by the City Council on September 20, 2012; and

WHEREAS, the City Council also set the public hearing for October 23, 2012, and notice of the hearing was given by mail to the owner of each business subject to the assessment, in accordance with the PBID Law; and

WHEREAS, the PBID Law requires that the resolution of intention contain a proposal to dispose of any assets acquired with the revenues of the assessments levied within the property and business improvement district; and

WHEREAS, the resolution of intention adopted by the City Council on September 23rd contained such a proposal which was prepared by the Director of Finance and recommended in the event of disestablishment, the liquidation of CVTMD assets; and

WHEREAS, the proposal further recommended that the annual financial audit required by the adopted Agreement for Tourism Marketing District Management Services ("Agreement") be used to identify the assets to be liquidated; and

WHEREAS, per the terms of the Agreement, the audit for fiscal year 2011-12 was to be submitted to the City no later than September 30, 2012, for the period July 1, 2011 through June 30, 2012; and

WHEREAS, staff recommended that the audit period be extended to cover activity through the date of disestablishment; and

WHEREAS, under the disestablishment procedures established in the PBID Law [Section 36671(a)], all revenues remaining after payment of outstanding debts shall be refunded to the district members using the same basis that was used to calculate the assessments levied; and

WHEREAS, the revenues to be refunded in this manner include both assessments levied and funds derived from the sale of asset; and

WHEREAS, if disestablishment is implemented staff recommends that all funds on account with the CVTMD operator be turned over to the City within 1 week of the disestablishment of the district; and

WHEREAS, any expenditure of these funds would then be made by the City after confirming the expense was an existing obligation at the time of disestablishment; and

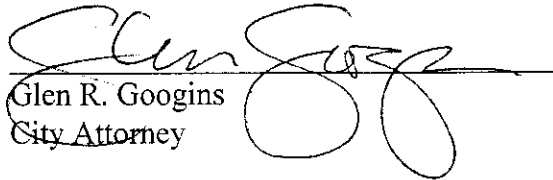
WHEREAS, following the payment of all verified debts, the City would refund the funds on account and the proceeds of the asset sale to the district members based upon their proportionate weight of the total CVTMD assessments levied in fiscal year 2011-12; and

WHEREAS, any additional assessments collected by the district members and remitted to the City subsequent to disestablishment of the district would be refunded directly to the payer; and

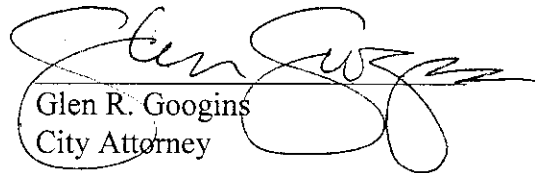
WHEREAS, a public hearing was held on October 23, 2012 and evidence and testimony was presented with respect to the requested disestablishment.

NOW, THEREFORE, BE IT RESOLVED, based on information provided by staff and testimony and evidence presented at the public hearing that the City Council of the City of Chula Vista does hereby confirm the validity of disestablishment petitions presented, disestablish the Chula Vista Tourism Marketing District and direct the Director of Finance to distribute any remaining CVTMD revenues and assets pursuant to staff's recommendation and Streets and Highways Code Sections 36670-36671.

Presented by


Glen R. Googins
City Attorney

Approved as to form by


Glen R. Googins
City Attorney